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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-268(BMC)
	:	
	:	U.S. Courthouse
	:	Brooklyn, New York
-against-	:	
	:	TRANSCRIPT OF
	:	JURY TRIAL
	:	
MUHANAD MAHMOUD	:	September 18, 2017
AL FAREKH,	:	9:30 a.m.
	:	
Defendant.	:	

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BEFORE:
HONORABLE BRIAN M. COGAN, U.S.D.J.,
and a Jury

APPEARANCES:

For the Government:	BRIDGET M. ROHDE, ESQ. Acting United States Attorney 271 Cadman Plaza East Brooklyn, New York 11201 BY: RICHARD M. TUCKER, ESQ. DOUGLAS M. PRAVDA, ESQ. SARITHA KOMATIREDDY Assistant U.S. Attorneys
	U.S. DEPT. OF JUSTICE National Security Division Counterterrorism Section BY: ALICIA H. COOK, ESQ.
For the Defendant:	LAW OFFICE OF SEAN M. MAHER, PLLC 233 Broadway New York, NY 10279 BY: SEAN M. MAHER, ESQ.
	RUHNKE & BARRETT 47 Park Street Montclair, NJ 07042 BY: DAVID A. RUHNKE, ESQ.

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Court Reporter: Holly Driscoll, CSR
Official Court Reporter
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Proceedings recorded by mechanical stenography, transcript produced by Computer-Assisted Transcript.

* * *

(The following takes place out of the presence of the jury.)

THE COURT: Good morning.

MR. RUHNKE: Good morning, Your Honor.

MR. TUCKER: Good morning.

THE COURT: Have a seat please. Okay. Let me first note that we were advised by the Marshals that there has been a lockdown at the MDC today and so they could not produce the defendant timely, they're going to produce him, he should be here shortly, but I've asked defense counsel if for the preliminary legal issues we have this morning defense counsel is willing to waive the defendant's appearance.

MR. RUHNKE: And we do, Your Honor.

THE COURT: All right.

Now, let's talk about the issues we have. First of all, on the chart, I've determined having heard from both

1 sides not to send it back to the jury room. If the government
2 wants to blow it up on a poster board and use it in closing,
3 that's fine.

4 My thinking on it is it's not so much a summary of
5 the voluminous evidence, and I do think we've satisfied the
6 voluminous requirement here, it's that it's really more a
7 summary of the expert's opinion than the evidence.

8 Now, I will say if the jury asks for it, I may well
9 give it to them during deliberations just as a convenience for
10 them instead of having them go back through all the FBI
11 handwriting -- sorry, fingerprinting expert's testimony but
12 preliminarily I think the government will not be unduly
13 prejudiced by using it as a demonstrative only for purposes of
14 closing, so that's the first issue.

15 The second issue, I didn't really get an express
16 response from the government as to what I'll call the Dratel
17 Giglio issue. What's happening with that?

18 MR. KOMATIREDDY: Yes, Your Honor, over the weekend
19 we reviewed both the materials at issue and the precedent on
20 the issue and part of that review is continuing today. Our
21 determination at this time is, first of all, that we've
22 disclosed all of the relevant and all of the material pursuant
23 to Giglio and 3500 in the disclosures we made prior to trial.
24 For the convenience of defense counsel we provided a summary
25 of that, the particular compensation related facts in a letter

1 last night to defense counsel so that they have it all in one
2 place. That was previously disclosed.

3 Our determination at this time is that there is no
4 other discoverable material. As I said, there is a little bit
5 of additional review we need to do today and my expectation is
6 we will provide the Court with a letter explaining why it is
7 we believe that there's no additional discoverable material
8 but because we've determined it is not discoverable, we are
9 not asking for relief under CIPA Section 4.

10 THE COURT: Okay. What about the fact that another
11 of your colleagues in some other case apparently did think it
12 was discoverable or am I presuming --

13 MR. RUHNKE: In more than one case, Your Honor.

14 MR. KOMATIREDDY: Your Honor, I have spoken with
15 that colleague. It turns out the facts are slightly different
16 from that. There was not a disclosure in either the Spin Ghul
17 case or in the Naseer case where this issue arose, the
18 prosecutors did not make a disclosure to the defense of any
19 classified material pertaining to Mr. Coleman, rather what
20 occurred in those cases was that Mr. Dratel had represented in
21 the Spin Ghul case -- Mr. Dratel submitted a letter from
22 another case, the Haseadrami case describing this material
23 similar to what defense counsel is doing here, submitting the
24 Dratel declaration describing this material. The material
25 itself was not provided to the government prosecutors.

1 What we have is there is some material in the
2 custody of the FBI, as I said, the review of that is what we
3 are completing today, but to answer Your Honor's question, in
4 both of those previous cases the prosecutors determined that
5 the material was not discoverable and explained why. I'm
6 happy to, of course we'll submit an explanation in line with
7 those.

8 THE COURT: Okay. I just, like I said, I'm
9 wondering how did Dratel get it if it's not discoverable.

10 MR. KOMATIREDDY: Fair question, Your Honor. It was
11 a prosecutor in another district who did make a disclosure out
12 of an abundance of caution and moved for that disclosure not
13 to be used in open court in any way and prevailed in that
14 respect. We believe that the content of that ruling and the
15 general rulings show that not only is it not a proper basis
16 for cross-examination but for the very reasons that it is not
17 a proper basis for cross-examination it is also not
18 discoverable.

19 THE COURT: Okay, but, again, your colleague's
20 abundance of caution you don't share?

21 MR. KOMATIREDDY: Your Honor, if I could explain
22 more fully in a classified setting?

23 THE COURT: That's fine, I don't want to press you
24 on that, I will wait for your letter. I'm just throwing out
25 there that it may be advisable to put the issue to rest to let

1 me see this material and make my own determination.

2 MR. KOMATIREDDY: Yes, sir.

3 THE COURT: Okay. The next issue I wanted to talk
4 about was the instruction I gave the jury on Friday to stay
5 away from media coverage of the London terrorist attack that
6 had occurred that morning or maybe the evening before, I guess
7 the evening before.

8 I've seen both parties' positions on that. I am not
9 going to question the jurors individually. I really think it
10 would be presumptuous to think that the jury would not follow
11 my instruction particularly since the incident was very
12 different as it turned out, it was a bomb in a civilian area
13 in a subway in a foreign city not involving any Americans and
14 I think it would heighten it to start asking the jurors
15 individually: Did you follow my instruction and did you do
16 what you're supposed to do and are you influenced?

17 And also I think in these kind of cases, unless
18 there's something particular about the incident, the Court is
19 always going to be chasing its tail trying to stay ahead of
20 the next incident, I mean there was another incident in
21 Marseilles over the weekend, these things happen.

22 I'll also note nobody died in the London incident
23 and it did not get, in my view, very much coverage at all over
24 the weekend, I thought it was eclipsed by the continuing good
25 box office returns of the movie It.

1 What I will do when I get the jury in here, I will
2 ask them as a group if they all followed the instruction that
3 I gave them on Friday concerning media coverage and if anyone
4 didn't, please raise your hand now and if anyone says they
5 didn't, then I'll talk to that person individually but to
6 just presume that I have to interrogate each one I think
7 doesn't give the jurors enough credit. All right.

8 And then my last issue I think was the discovery
9 of this letter on the thumb drive. What's going on with
10 that?

11 MR. TUCKER: Well, Your Honor, the letter was
12 identified by the investigator who is going to be testifying.
13 It is a typed letter so it is like a word.doc file. We
14 disclosed it to the defense on September 7th. It is in
15 unallocated space just like the handwritten letters. As we
16 indicated in our letter, besides being in the same location as
17 the other letters, it has many of the same indicia of similar
18 idiomatic language and covers many of the same topics. It is
19 highly probative, as we indicated in our submission to the
20 Court, and we wanted -- actually no one has raised an
21 objection to it, so I'm presuming defense counsel may have an
22 objection.

23 THE COURT: I think he said he's reserving, he wants
24 to file something on it or be heard orally on it.

25 MR. TUCKER: Of course. We just wanted to provide

1 it to the Court in advance so when the Court hears testimony
2 and the witness reads the selection of the other handwritten
3 letters, the Court will know what to listen for and will hear
4 those same things that are apparent to the government and
5 understand the basis for admission under Rule 901(a).

6 THE COURT: Okay, but the government's contention is
7 that there's sufficient circumstantial indication that this
8 letter was written by the defendant to satisfy authenticity?

9 MR. TUCKER: That's correct, Your Honor.

10 THE COURT: Okay.

11 MR. RUHNKE: We wanted to be heard obviously on
12 that, Your Honor. Could I step forward?

13 THE COURT: Sure.

14 MR. RUHNKE: It would be easier.

15 The issue of the provenance of this particular thumb
16 drive, you know, continues to come up and as we all
17 understand, there's no witness who is going to testify where
18 it originated, how it was located, simply that an FBI agent
19 stationed in Afghanistan was given it by someone and now here
20 it is in court.

21 With regard to the handwritten letters that were in
22 there, at least the government has an expert who would testify
23 that it may have been written by the defendant, not that it
24 was but that it may have been written by the defendant. In
25 this case in this handwritten -- this Word document, the seven

1 or eight page Word document, the government alleges that the
2 following tie this to Mr. Al Farekh: A preoccupation with
3 security, discussion regarding unwillingness to appear in
4 public because of drone attacks, and efforts to communicate
5 with al-Qaeda leadership about relocating from Waziristan to
6 Syria.

7 That's not enough to say that, even the minimum
8 threshold for authenticity that the Federal Rules of Evidence
9 require, this is not enough. It's found on the same thumb
10 drive but there's no guarantee at all who authored it, when it
11 was authored and certainly not who authored it and that's I
12 think the linchpin to authenticity. We object to it and ask
13 the Court to not allow the government to introduce the
14 document.

15 THE COURT: Okay. Does the government have anything
16 more for foundation other than the three characteristics that
17 Mr. Ruhnke just identified?

18 MR. TUCKER: Well, the three characteristics plus it
19 is found in the exact same place as the other files, Judge, I
20 think that is the most important thing to focus on, they're
21 all in unallocated space on the same piece of media. Your
22 Honor, citing to Ganas: "As long as a reasonable juror could
23 find that evidence was authentic, we permit that evidence be
24 introduced."

25 THE COURT: I don't think a reasonable juror could

1 find it, you know why, each one of those three criteria is
2 shared by every terrorist in Afghanistan, right, secrecy and
3 fear of apprehension, those things are all there. As far as
4 being located on the thumb drive, if you could tie the thumb
5 drive to the defendant, that would be something but we can't
6 even do that which means that somebody could have put on that
7 letter from some other al-Qaeda operative and it wouldn't be
8 attributable to the defendant. So, I think it would be asking
9 the jury to speculate to allow it in.

10 MR. TUCKER: Understood, Your Honor. My only
11 request would be this, Your Honor, the witness who will read
12 the selected letters will testify I expect tomorrow, although
13 much depends on the length of some crosses and when we start
14 today, I would ask the Court for the opportunity to take a
15 quick break after we have the witness read those handwritten
16 letters so that Your Honor can hear the language and hear the
17 similarities and we can make one more application to Your
18 Honor and if Your Honor maintains that position, of course, we
19 understand.

20 THE COURT: I was going to suggest that we have a
21 104(a) hearing outside the hearing of the jury and let me hear
22 how it plays out but I will tell you my inclination is pretty
23 strongly against it.

24 MR. TUCKER: Understood.

25 THE COURT: Unless there's something more that comes

1 out in the live testimony.

2 MR. TUCKER: Understood, Your Honor.

3 THE COURT: Okay.

4 MR. RUHNKE: Your Honor, we had some issues we
5 wanted to raise --

6 THE COURT: Go ahead.

7 MR. RUHNKE: -- while we have the time here. And
8 just so the Court knows, once Mr. Al Farekh does --

9 MR. PRAVDA: Your Honor, if Mr. Ruhnke could stay at
10 the table I could actually lip read him. When he's facing the
11 Court over there --

12 THE COURT: Would you mind accommodating?

13 MR. RUHNKE: Not at all.

14 THE COURT: If he can see you --

15 MR. RUHNKE: I understand.

16 (Pause.)

17 Your Honor, first with regard to this issue of what
18 we'll call the Dratel declaration for shorthand, I'm
19 uncomfortable with just accepting the government's
20 representations about what they were told by some other
21 Assistant about what happened in that case. If we're going to
22 have factual representations as to what went on, we'd be
23 prepared to call Mr. Dratel and I think the government should
24 be prepared to call whatever Assistant it was that handled
25 this case.

1 I think the easiest solution is what Your Honor
2 suggested, that it be submitted to the Court as a classified
3 document so Your Honor could look at it and perhaps submitted
4 also to the defense as a classified document so we can be in a
5 position to advocate why it is that the material may be
6 suitable for cross-examination or otherwise evidential.

7 THE COURT: Well, let me get the government's letter
8 first. As I said, it is possible that I'll want to look at
9 the documents to make my own determination both as to whether
10 it needs to be produced, whether it's indeed properly
11 classified but we are not there yet, let me get the
12 government's letter.

13 MR. RUHNKE: Yes.

14 Your Honor, not to sound like I'm complaining but I
15 suppose I am, the government has been very slow to let us know
16 who the upcoming witnesses are. As of right now, we don't
17 know who is coming to testify tomorrow. The government has
18 said they have some availability issues, the government has
19 said they need to maybe move some things around but we do not
20 know who is coming tomorrow.

21 There are classes of major witnesses who are still
22 outstanding. There are two witnesses associated with the
23 subway bombing plot from 2000 -- the New York City subway
24 bombing plot from 2010, Mr. Zazi and Mr. Ahmedzay, and both of
25 them have produced enormous amounts of 3500 material, Mr. Zazi

1 in particular, and what the government has told us is that
2 they're not going to know who is coming tomorrow or the next
3 day until maybe this afternoon and that puts us in a terrible
4 position and it may cause us to ask the Court to take tomorrow
5 off so we can play catch-up.

6 This has not been my experience, the government is
7 rolling disclosures on a 24 hour or less basis. There just
8 aren't that many witnesses left but we can't be ready for all
9 of them on short notice. With regard to Mr. Coleman, for
10 example, there are like 185 pieces of Jencks material
11 associated with Mr. Coleman. Last night at 6:30 or 6:15 we
12 were provided another 300 pages of 3500 material.

13 THE COURT: I thought we were told Coleman is
14 testifying tomorrow last week, do I misremember that?

15 MR. RUHNKE: He's not testifying tomorrow as far as
16 I know and I don't think we were ever told that.

17 MR. TUCKER: Your Honor, just a couple of things.

18 MR. RUHNKE: Could I just finish.

19 THE COURT: Let Mr. Ruhnke finish.

20 MR. RUHNKE: And so we'd like some notice as to who
21 is coming tomorrow. We'd like some idea that the 3500
22 material, which we didn't get until September the 5th, is done
23 and to be 100 percent accurate, we weren't given really the
24 expert bases of what they were going to testify to until
25 September 11, one week ago today. We had gotten in June and

1 early July some disclosures primarily of the forensic
2 witnesses and those come in.

3 When it became apparent after receiving the 3500
4 material and the government's trial exhibits that their
5 experts -- that they had not made expert disclosure on their
6 two al-Qaeda/Islam experts, Mr. Vidino and Mr. Coleman, we
7 sent a letter to the government requesting full expert
8 disclosure. It was only on September 11 that we got the
9 nature of the disclosure.

10 The government seems to be taking the position that
11 Mr. Coleman will be used simply to supplement Mr. Vidino and
12 used simply to introduce or try to introduce several jihadist
13 videos or other things that he's pulled off the internet but
14 then the government also said and, by the way, we may also use
15 him for everything that we've said we're going to use
16 Mr. Vidino on. So, we're in a bad position on that issue.

17 I just want to give the Court a preview of what
18 we're working on now in terms of motions and other things.

19 The witness from the subway plot, Mr. Ahmedzay, his
20 3500 material clearly indicates that he identifies Ferid Imam
21 as a trainer who trained him in Waziristan or the Federally
22 Administered Tribal Areas of Pakistan, he had a lot of contact
23 with him and he identifies him as a person who was at least
24 there a year or so later. We have concerns about that as
25 what's the relevance of the fact that he is interacting with

1 Mr. Imam, has no interaction and no identification of
2 Mr. Al Farekh, the defendant.

3 When it comes to Mr. Zazi, he does not even identify
4 any of the defendant's -- or associates of the defendant as
5 being in Afghanistan or Pakistan as a trainer, I think the
6 best he can say is that there is a photograph that looks -- a
7 photograph of Mr. Imam that looks like --

8 THE COURT: Can I stop you, Mr. Ruhnke, because I'm
9 afraid you're giving me so much information that I'm not going
10 to be able to digest it all.

11 MR. RUHNKE: Okay.

12 THE COURT: This sounds like you're moving in limine
13 to exclude witnesses.

14 MR. RUHNKE: We're working on that motion.

15 THE COURT: You should really put it in writing.

16 MR. RUHNKE: Okay, we will do it in writing.

17 THE COURT: Let's stick right now to the disclosure
18 of witness issues. Who is coming next, what is the problem
19 with that?

20 MR. TUCKER: Your Honor, just a couple of points;
21 the first is, as Your Honor knows -- I'm just going to make
22 the record here -- 3500 with respect to Mr. Ahmedzay and
23 Mr. Zazi was provided to the defense before the overseas
24 deposition in March. They've had that material for six
25 months.

1 As we indicated to the Court on Friday, the
2 government's hope and expectation is that we will rest on
3 Monday, one week from today, which not counting today means we
4 have three trial days left. We indicated to defense counsel
5 on Friday that we expected tomorrow to relate to the testimony
6 about the USB drive and that after that the sequence would be
7 dictated by the time that we began to play the deposition.
8 That was provided to the defense on Friday.

9 On Sunday defense counsel again asked what is the
10 expected sequence, who do you expect to call next week. We
11 responded via e-mail that the government hopes to call all the
12 witnesses except for the arresting agents and Mr. Ferrell this
13 week and that we would expect them to testify on Monday.

14 Your Honor, we're talking about two trial days, I
15 can't imagine why the sequence matters when we're talking
16 about two trial days when counsel has had this material for
17 months. We're doing the best we can but certain witnesses
18 have scheduling limitations, Judge, and I will tell the Court
19 honestly that on Saturday afternoon the whole trial team was
20 in my office and we were trying to figure out what our
21 sequence is. I will know the sequence or the next step when
22 we hit play on the deposition today, Judge.

23 THE COURT: Okay. Mr. Ruhnke, I'm not going to
24 order more than that. I think it is a valid point that we're
25 at the tail end now and the time to be prepared is about now

1 with three, I mean it might spill into four but there aren't
2 many trial days left.

3 MR. RUHNKE: So, perhaps just this one additional
4 request of the government is that in its expert notice on
5 Mr. Coleman they described a limited role for Mr. Coleman and
6 an all out role for Mr. Coleman and I'd like to know which
7 it's going to be.

8 THE COURT: Which is the case, is Coleman to
9 supplement the other witness or is he going to be as primary?
10 I mean you can't have them testifying to the same thing
11 obviously, I'm sure you know that.

12 MR. KOMATIREDDY: Of course not, Your Honor. In our
13 letter we provided a bullet-pointed list of the topics we
14 expect Mr. Coleman to testify to. That is our expectation
15 that he will testify to those topics and as a supplement to
16 Dr. Vidino at this time. Of course, depending on the nature
17 of the cross and the nature of Dr. Vidino's direct, we may
18 seek additional topics but at this time we expect that
19 Dr. Vidino will testify as to radicalization of the West more
20 generally and al-Qaeda more generally.

21 Mr. Coleman is being called as an expert, primarily
22 as a fact witness with respect to specific jihadist ideology
23 and videos and media that have been out in the world and are
24 relevant to this case.

25 MR. TUCKER: And just because I'd hate the record to

1 be muddled, Judge, while it is true that the government
2 supplemented our disclosures at defense counsel's request on
3 the 11th without Court intervention, the government satisfied
4 its disclosure obligations months beforehand including a very
5 detailed disclosure in August. So, again, counsel has had
6 this stuff for more than a month.

7 MR. RUHNKE: Your Honor, that's inaccurate, there
8 was no description of Mr. Coleman.

9 THE COURT: Well, I must say with regard to
10 Mr. Coleman I'm not terribly sympathetic as to the adequacy of
11 disclosure because Mr. Coleman is so well traveled in these
12 cases that every defense lawyer knows his potential testimony,
13 the universe of his potential testimony. To the extent the
14 government has narrowed it here, that's helpful to the defense
15 but I don't think required. So, I'm not terribly troubled by
16 disclosure about Mr. Coleman.

17 I remain of the view that since there are so few
18 days left of the trial, the defense just needs to be ready and
19 has had the documents at least to become ready for an adequate
20 period. Okay.

21 Anything else?

22 MR. TUCKER: Just a couple quick housekeeping
23 matters from the government, Your Honor. This one I keep
24 forgetting to raise and our media office was getting
25 frustrated with me. There have been a number of media

1 requests for exhibits that have been introduced into evidence.
2 The government's normal practice is to raise those with
3 defense counsel and with the Court in advance and to provide
4 to the media anything that goes into evidence. That would be
5 the practice we'd follow here unless the Court or defense
6 counsel wants to raise an issue.

7 THE COURT: Any issue from defense?

8 MR. RUHNKE: You know, we're certainly concerned
9 always about whatever appears in the newspaper and whatever is
10 written about the evidence. Our preference would be that it
11 not be released to the press, that's our preference.

12 THE COURT: All right. I'm afraid the right of
13 access that the public and the press have supersedes that
14 level of concern, so while I might have my own feelings about
15 it, if it is part of the public record I'm going to authorize
16 the government to release it.

17 MR. TUCKER: Thank you, Your Honor.

18 The next thing, I've raised this with counsel in
19 advance, the government formally makes its request for any
20 26.2 material relating to defense witnesses. As we indicated,
21 the government expects to rest hopefully about a week from now
22 so we're making that request.

23 And just so the Court knows where we're going today,
24 we will start with who I expect will be a brief witness who is
25 not available after today who will talk about the forensic

1 examination of the USB drive, he didn't actually review any of
2 the materials, he just extracted the data and put it on a
3 platform, so his testimony is very brief. Then we will call a
4 witness who will testify about the defendant acquiring the
5 tickets to travel overseas.

6 Then we will, without defense objection I
7 understand, admit pursuant to the public records exception to
8 the hearsay rule the al-Qaeda designations and Ms. Cook will
9 read a couple of lines from those which should take about a
10 minute, and then we will proceed to play the deposition.

11 THE COURT: Okay. I think the defendant is here.

12 MR. RUHNKE: Yes, Your Honor, we may need just a
13 minute for him to -- what happened is we provided trial
14 clothes for him and MCC lost them all so we had to replace
15 them.

16 THE COURT: I see, okay.

17 Let's take whatever break we need, tell Ms. Clark
18 when he's ready and we'll begin.

19 MR. TUCKER: Thank you, Your Honor.

20 THE COURT: Okay.

21 (Time noted: 10:05 a.m.)

22 (Recess taken.)

23

24 THE COURT: Get the jury please.

25 MR. RUHNKE: Mr. Maher just stepped out a second it

1 appears, let me go find him.

2 MR. TUCKER: I'm going to find my colleagues as
3 well, I'll look for Mr. Maher too.

4 THE COURT: Okay.

5 (Pause.)

6 (Jury enters courtroom.)

7 THE COURT: Everyone be seated. Good morning,
8 ladies and gentlemen. I am sorry for the delay. As I told
9 you, it's not like a Broadway dance play where everyone moves
10 in the right place at the right time.

11 I did want to follow up with you, when we broke on
12 Friday night I gave you an instruction about media coverage;
13 did anyone have any difficulty following that instruction?

14 A JUROR: No.

15 A JUROR: No.

16 THE COURT: Raise your hand if you had any problem.

17 (No hands raised.)

18 THE COURT: Okay, thank you.

19 All right. The government may proceed.

20 MR. TUCKER: Your Honor, the government calls Soyup
21 Hahn.

22 (Continued on next page.)

23

24

25

S. Hahn - Direct/Mr. Tucker

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1 (In open court; 10:17 a.m.)

2 COURTROOM DEPUTY: Please raise your right hand.

3 **SOYUP HAHN**, called by the Government, having been first duly
4 sworn/affirmed, was examined and testified as follows:

5 THE WITNESS: I do.

6 COURTROOM DEPUTY: Please state and spell your name
7 for the record.

8 THE WITNESS: Soyup Hahn. S-o-y-u-p. H-a-h-n.

9 COURTROOM DEPUTY: Thank you. You may be seated.

10 THE COURT: You may inquire.

11 MR. TUCKER: Thank you, your Honor.

12 DIRECT EXAMINATION

13 BY MR. TUCKER:

14 Q Good morning Mr. Hahn.

15 A Good morning.

16 Q Where are you employed, sir?

17 A I'm employed at the FBI.

18 Q That's the Federal Bureau of Investigation?

19 A Yes.

20 Q What do you do for the FBI?

21 A I'm a forensic examiner at the Computer Analysis Response
22 Team.

23 Q The Computer Analysis Response Team sometimes called
24 CART?

25 A That's correct.

S. Hahn - Direct/Mr. Tucker

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1 Q What does it mean to be a forensic examiner?

2 A We provide technical assistance to the case agents or the
3 investigators so that they can review digital evidence items.

4 Q What are some examples of digital evidence?

5 A Could be anything from a cell phone, thumb drive,
6 computers, external media.

7 Q What's your educational background, just generally?

8 A I have a Bachelors Degree in Computer Systems Engineering
9 at Boston University. I have a Masters Degree in
10 Cybersecurity at New York University.

11 Q Have you received any specialized training from the FBI
12 in the area of computer forensics?

13 A I have.

14 Q Please tell the jury a little about some of the training
15 that you received?

16 A I have trained in specific applications as well as
17 forensic methodologies and techniques that you can use for
18 performing digital forensic examinations.

19 MR. TUCKER: May I approach the witness, your Honor.

20 THE COURT: You may.

21 Q I'm showing the witness what's been marked for
22 identification as Government's Exhibit 430.

23 Do you recognize this item generally, Mr. Hahn?

24 A I do.

25 Q Is that a USB drive that you forensically examined?

S. Hahn - Direct/Mr. Tucker

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1 A Yes, it is.

2 Q On that document in front of you has been marked for
3 identification as Government's Exhibit 700.

4 What is that, just generally?

5 A It's a picture of the thumb drive that you just showed
6 me.

7 Q That's a photograph of the thumb drive that's
8 Government's Exhibit 430?

9 A That's correct.

10 Q How do you recognize it?

11 A There's a date as well as my initial.

12 Q Is there also a unique identifier associated with that
13 USB drive?

14 A Yes, there is. It's NY0015225.

15 MR. PRAVDA: Your Honor, the Government moves to
16 admit Government's Exhibit 700 into evidence.

17 MR. RUHNKE: No objection.

18 THE COURT: Received.

19 (Government's Exhibit 700 was received in evidence
20 as of this date.)

21 MR. TUCKER: May we publish?

22 THE COURT: You may.

23 MR. PRAVDA: I'm going to use the document camera
24 for this.

25 Q Mr. Hahn, now the jury can see what's in evidence as

S. Hahn - Direct/Mr. Tucker

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1 Government's Exhibit 700.

2 Is this the unique identifier, NY0015225, that you
3 were just referring to?

4 A That's correct.

5 Q Can you indicate where your initials appear?

6 A On the bottom right or in the middle right side next to
7 initial.

8 Q Please tell the jury the process that you used to examine
9 this thumb drive, USB drive?

10 A Typically, there's a three-step process: Identification,
11 preservation, and analysis.

12 Identification is when we identify what device it
13 actually is and give it a unique number so we can always
14 reference back to the device.

15 The second is preservation is when we create a
16 forensic examination bit-to-bit identical copy of the original
17 evidence.

18 And the last step is analysis where we run the
19 forensic image through our application. We can extract all
20 the evidence, put them into different categories, index so we
21 can quickly do a search.

22 Q Did you follow those procedures with this USB drive?

23 A I have.

24 Q All right. And you mentioned making a bit-for-bit copy.
25 Do you use any precautions to avoid altering the data when you

S. Hahn - Direct/Mr. Tucker

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1 make that copy?

2 A Yes, we do we use a device called Write Blocker which
3 allows us to read the data from the original evidence. We can
4 make it write to the device so that we can't modify any of the
5 original evidence.

6 Q Now, when you're done the copy using that Write Blocker,
7 do you use any techniques so that you can verify that you have
8 a bit-for-bit copy?

9 A Yes, we do. We do something called a hash calculation.

10 Q It's hash, h-a-s-h?

11 A That's correct.

12 Q Please tell the jury what that is?

13 A It's a mathematical algorithm, that when you have data,
14 it calculates a unique value to the point when you have a
15 small change, the value would be drastically different.

16 During the preservation process, we trade a -- we
17 calculate the hash value of the original evidence as well as
18 the forensic image that we create and we compare those values
19 to verify that we have an identical copy of the original
20 evidence.

21 Q Did you follow that procedure here?

22 A I have.

23 Q And were you successful in making a bit-for-bit copy of
24 the original image?

25 A Yes.

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1 Q You mentioned your third step in your process was
2 analysis.

3 What kind of analysis did you conduct what did you
4 do for that stage?

5 A For this, we read it through our commercially available
6 application called a Forensic Toolkit also known as FTK.

7 Q So what does Forensic Toolkit do?

8 A It's an application that takes in the forensic image and
9 does the thing as I mentioned earlier, you know, extracting
10 all the files and putting it into different categories.
11 Creating an index of all the words as well as recovering
12 deleted files.

13 Q Did you follow that procedure here?

14 A I have.

15 Q And once the data is uploaded onto Forensic Toolkit, what
16 is the next step, what is possible after that?

17 A We let the case agent or the investigators review the
18 forensic image through the application.

19 Q So FTK, or Forensic Toolkit, can be called a review
20 platform?

21 A Yes.

22 Q Mr. Hahn, what is unallocated space?

23 A It's free space on the computer that you normally will
24 not see, but that's where the deleted files reside in.

25 Q And using Forensic Toolkit, is it possible to review

S. Hahn - Direct/Mr. Tucker

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1 files that are in unallocated space that was deleted?

2 A Yes.

3 Q And, in this instance, were any files recovered from
4 unallocated space on this USB drive?

5 A Yes.

6 Q Mr. Hahn, what is metadata?

7 A Metadata is data about data. So, for example, when you
8 take a picture with your phone or camera, there is a metadata
9 that is associated with the picture itself like the time you
10 took the picture, the GPS location, or the setting of the
11 camera itself.

12 Q I'm going to show you what's in evidence, and this is
13 just for the witness, I guess. It's what's in evidence as
14 Government's Exhibit 503. Have you see this CD prior to
15 today?

16 A I have.

17 Q And how do you recognize it?

18 A My initial as well as the date is on the CD.

19 Q What are the contents of the CD generally?

20 A There was a video file.

21 MR. TUCKER: Your Honor, this is in evidence. I am
22 going to play a short excerpt of it to orient the jury if we
23 can switch to the lectern laptop.

24 And is the audio on?

25 COURTROOM DEPUTY: Yes.

S. Hahn - Direct/Mr. Tucker

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1 MR. TUCKER: Starting Exhibit 503 from 49 seconds.

2 (Video file played in open court.)

3 (Video file concludes.)

4 Q Mr. Hahn, did you have the opportunity to review some of
5 the metadata associated with this video file, Government's
6 Exhibit 503?

7 A I have.

8 Q And what, if anything, did that metadata tell you about
9 the date on which that file was created?

10 A There was a metadata that saying that it was created on
11 February 24, 2007.

12 Q And are there any limitations on that metadata in terms
13 of its precision in showing the date being produced on
14 February 24, 2007?

15 A I mean, the date is as good as the device that produced
16 the video. So if the camera or the phone that recorded this
17 video is off, then the time is going to be off as well. We
18 also have to consider the time zone difference which can be
19 changed by plus/minus 24 hours.

20 Q 24 hours from February 24, 2007?

21 A That's correct.

22 MR. TUCKER: Nothing further, your Honor.

23 THE COURT: Any cross?

24

25

1 CROSS-EXAMINATION

2 BY MR. RUHNKE:

3 Q Good morning, sir.

4 A Good morning.

5 Q Just a couple of questions. I want to start off where
6 you ended and that's with the Government Exhibit 503 the CD
7 I'm heading up.

8 Do you see that?

9 A Yes.

10 Q I just want to be clear that did not come from the thumb
11 drive; correct?

12 A That's correct.

13 Q And it came from some other source. You don't know where
14 it came from, you just extracted the metadata; right?

15 A That's correct.

16 Q Title of the file was Muhanad a/k/a Chuck Norris?

17 A That's correct.

18 Q Did you give that that title or did somebody else give it
19 that title?

20 A I didn't do any changes to it.

21 Q The thumb drive that you did examine and that you
22 testified about, do you have any idea where that came from or
23 was just something that came to you as part of your duties as
24 a forensic examiner?

25 MR. TUCKER: Your Honor, could we have a brief

1 sidebar?

2 THE COURT: Okay.

3 MR. RUHNKE: I'll withdraw the question and rephrase
4 it.

5 THE COURT: Okay.

6 Q The thumb drive was simply given to you as part of your
7 job as a forensic examiner and you took off the information
8 that you used; correct?

9 A That's correct.

10 Q And then you've had nothing further to do with this
11 investigation; is that correct?

12 A That's correct.

13 MR. RUHNKE: I have nothing further, your Honor.

14 THE COURT: Any redirect.

15 MR. TUCKER: No, your Honor.

16 THE COURT: You may step down. Thank you very much.
17 (Witness leaves the witness stand.)

18 THE COURT: Government may call its next witness.

19 150.

20 MS. KOMATIREDDY: Government calls Zahara Shoudeywa.
21 (Witness takes the witness stand.)

22 COURTROOM DEPUTY: Please raise your right hand.

23 ZAHARA SHOUDEYWA, called by the Government, having been first
24 duly sworn/affirmed, was examined and testified as follows:

25 THE WITNESS: Yes, I do.

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 COURTROOM DEPUTY: Please state your full name for
2 the record.

3 THE WITNESS: Zahara Shoudeywa. Z-a-h-a-r-a.
4 S-h-o-u-d-e-y-w-a.

5 THE COURT: You may inquire.

6 DIRECT EXAMINATION

7 BY MS. KOMATIREDDY:

8 Q Good morning.

9 A Good morning.

10 Q Where do you work, ma'am?

11 A Sahara Travel in Winnipeg.

12 Q Sahara Travel in Winnipeg. Where is Winnipeg?

13 A Manitoba. That is in Canada.

14 Q What kind of business is Sahara Travel?

15 A Selling travel tickets.

16 Q How long have you been at Sahara Travel?

17 A Eleven years.

18 Q And do you own the business?

19 A Yes.

20 Q How long have you owned the business?

21 A Eleven years, since 2006.

22 Q I'm going to show just the witness from the document
23 camera, please, what's been marked as Government's Exhibit
24 1301.

25 Do you recognize that?

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 A Yes.

2 Q What is it?

3 A That's the sign of my business in front of my office.

4 Q Is that a fair and accurate photograph depicting your
5 office and the front of your office?

6 A Yes.

7 MS. KOMATIREDDY: The Government moves 1301 into
8 evidence.

9 MR. MAHER: No objection.

10 THE COURT: Do you say, "No objection"?

11 MR. MAHER: Correct.

12 THE COURT: Received.

13 (Government's Exhibit 1301 was received in evidence
14 as of this date.)

15 MS. KOMATIREDDY: Please publish to the jury.

16 THE COURT: Maybe we can.

17 COURTROOM DEPUTY: Could you see it.

18 THE JURY: (Collectively) Yes.

19 Q Looking at this, Ms. Shoudeywa, you said this is your
20 business, Sahara Travel and Tours; is that right?

21 A Yes.

22 Q What is the street that it is currently located on?

23 A 1172 Pembina Highway.

24 Q Pembina Highway, is that in Winnipeg?

25 A Yes.

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 Q Is that close to the University of Manitoba?

2 A It's about seven minutes' drive.

3 Q Were you always at that location?

4 A No.

5 Q What was your previous location?

6 A 2995 Pembina Highway.

7 Q Is that just down the road from this location?

8 A Yes.

9 Q Was your previous location close to the University of
10 Manitoba?

11 A It's closer to the university than this location.

12 Q Approximately how long of a drive?

13 A Probably about three to four minutes.

14 Q Did there come a time when you met an individual named
15 Muhanad Al Farekh?

16 A Yes.

17 Q Approximately when was that?

18 A When he came in to purchase his ticket.

19 Q And do you remember the year or the month?

20 A Yes, that was in 2007.

21 Q Can you describe the circumstances of what led you to
22 meet him?

23 A He came in to request to purchase a ticket.

24 Q When he came into your office, can you describe for the
25 jury what your office looks like, how big is it, how many

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 people were inside?

2 A Myself only and it's about 3 to 400 square feet.

3 Q So it's a small office?

4 A Yes.

5 Q You were the only one there?

6 A Yes.

7 Q And when he came in in 2007, what did he ask for?

8 A He asked to purchase a ticket to Karachi, Pakistan.

9 Q What happened next?

10 A So he just provided the date that he wants to travel and
11 his return and I just booked his ticket accordingly.

12 Q When you book a ticket for someone, and they're going to
13 a foreign location, do you give them any information?

14 A Usually, that I have to make sure that he has the -- all
15 the visa. Let him know that he require the visa of the
16 destination or just ask him if he knows that he need the visa
17 at his destination.

18 Q And then after you give them that advice, do you then
19 proceed to book the ticket?

20 A Yes.

21 Q I'm going to show you what's been marked as
22 Government Exhibit 1303.

23 MS. KOMATIREDDY: Just for the witness, please.
24 1304.

25 Q Do you recognize those documents?

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 A Yes.

2 Q Can you describe generally what they are?

3 A For this one is my -- the first one is the receipt on top
4 of the receipt that was my reservation record.

5 Q And 1304?

6 A I can't see. This is the debit copy of the transaction.

7 Q Government Exhibits 1303 and 1304, are those receipts and
8 transaction records that you created in the course of making a
9 booking for someone?

10 A The receipt that I have here for the debit is after the
11 transactions that the passenger paid for it and that is my
12 record.

13 Q These are records from your own files of your business;
14 is that right?

15 A Yes.

16 Q And were they created in the ordinary course of
17 interacting with your client?

18 A Yes.

19 Q Were they maintained in the ordinary course of your
20 business?

21 A I do maintain them for a certain period.

22 Q Are these true and accurate copies of your business
23 records from Sahara Travel?

24 A Yes.

25 MS. KOMATIREDDY: The Government moves 1303 and 1304

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 into evidence.

2 MR. MAHER: No objection.

3 THE COURT: Received.

4 (Government's Exhibits 1303 and 1304 were received
5 in evidence as of this date.)

6 Q Starting with 1303. For whom did Mr. Farekh book
7 tickets?

8 A For Mr. Yar Maiwand, Al Farekh Muhanad, and Imam Ferid.

9 Q Can you describe to us explain the itinerary of the
10 booking?

11 A Air Canada Flight No. 8564 on the 6th of March from
12 Winnipeg to Montreal. HK stands for confirm for three. 8:45
13 is the departure a.m. arriving to Montreal at 12:28 p.m.

14 Q What were the other stops in their itinerary?

15 A I'm sorry, what?

16 Q What were the other stops in their itinerary?

17 A This is just a confirmation of those flights and the
18 Montreal to -- the itinerary.

19 THE COURT: Right. She's asking where the flight
20 stopped.

21 THE WITNESS: Oh, the stops. I'm sorry.

22 THE COURT: Yes.

23 THE WITNESS: Winnipeg to Montreal. Montreal to
24 London. London to Doha. Doha to Karachi.

25 Q Was there a return portion to this ticket?

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 A Yes.

2 Q What was the itinerary of the return portion?

3 A Karachi to Doha. Doha to Frankfurt. Frankfurt to
4 Toronto. Toronto to Winnipeg.

5 Q Now, the departure date for this trip was March 6th; is
6 that right?

7 A Yes.

8 Q What was the scheduled return?

9 A 6th of April.

10 Q Is that common to have a one-month return?

11 A Yes.

12 Q Is it -- who determines the return date?

13 A The clients.

14 Q Is it flexible?

15 A Yes.

16 Q How do you know that?

17 A Because, normally, when they come in, they can tell me
18 whatever the departure they want and the return date they say
19 just approximately a month and I just provide them what I
20 have. It could be a day before or day after more or less a
21 month, and if they agree with that we proceed.

22 Q Now, how did Mr. Farekh pay for these tickets?

23 A He paid cash 2,500 and I have debit 2,177.

24 Q And looking at the receipt at the bottom of 1303, can you
25 describe what we're looking at here, the security receipt?

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 A That's the receipt from Mr. Muhanad and I didn't complete
2 the last name and it's just the details of the payment. The
3 cash was 2,500 and I debit is 2,177 and the total --

4 Q Who made this receipt?

5 A I did.

6 Q So the handwriting is on this receipt is yours?

7 A Yes.

8 Q And Mr. Farekh paid for all three tickets?

9 A Yes.

10 Q This signature, is that also yours?

11 A Yes.

12 Q And on what date did he pay for these tickets?

13 A The most I can read is on the 2nd of March, 2007.

14 Q Turning to Government Exhibit 1304, can you describe what
15 we're looking at here?

16 A This is the copy of my debit transaction.

17 Q And here at the top, whose handwriting is that?

18 A Mine.

19 Q And this is the portion that was paid by debit as opposed
20 to cash; is that right?

21 A Yes.

22 Q If I could show just the witness, please.

23 Government Exhibit 1305. Do you recognize this,
24 ma'am?

25 A Yes.

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 Q What is it just generally?

2 A It's a copy of the ticket.

3 Q Is this a true and accurate copy of the ticket that you
4 issued for Mr. Farekh?

5 A Yes.

6 MS. KOMATIREDDY: The Government moves 1305 into
7 evidence.

8 MR. MAHER: No objection.

9 THE COURT: Received.

10 (Government's Exhibit 1305 was received in evidence
11 as of this date.)

12 Q Just for the record, Ms. Shoudeywa, is it your practice
13 to copy copies of the tickets?

14 A Yes.

15 Q And, in general, what do you make a copy of?

16 A Normally, I just make a copy of the first page of the
17 ticket.

18 Q The first page of the ticket. Can you explain how many
19 pages there are to this ticket?

20 A Approximately three passengers on here.

21 Q So just going back to 2007. At this time, were you
22 dealing with electronic tickets or paper tickets?

23 A Paper tickets.

24 Q And so, these holes on the side, that's just an
25 indication of an actual physical ticket?

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 A Yes.

2 Q How would a client get a ticket from you?

3 A They pick it up from me.

4 Q So Mr. Farekh came to book a reservation and he came to
5 pick up a ticket?

6 A Yes.

7 Q And just looking at this ticket a little more closely, it
8 says here at the top there's some indications about
9 refundability and then it says, "Changes, one free."

10 Do you see that?

11 A Yes.

12 Q Explain what that means?

13 A That means the client is allowed to have one free change
14 on this ticket.

15 Q When a customer changes their itinerary, how would they
16 go about doing that if they've already departed?

17 A They can contact the airline directly to do that.

18 Q Do they have to contact you?

19 A Not necessarily.

20 Q They can directly contact the airline?

21 A Yes.

22 Q And earlier, you testified that this was a return ticket.
23 How long was the return portion good for?

24 A This ticket is good for six months.

25 Q So what happens after six months?

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 A It expires.

2 Q And it can't be used any more?

3 A No.

4 Q Do you have any way of knowing whether the return portion
5 was used?

6 A No.

7 Q Ms. Shoudeywa, you said that Mr. Farekh had come into
8 your travel agency several times; is that right?

9 A Twice.

10 Q Had he come in before seeking to purchase this ticket to
11 Pakistan?

12 A He must have come in once before that, yes, because I
13 remember him.

14 Q I'm sorry.

15 A He was a repeat client.

16 Q And you remember him?

17 A Yes.

18 Q When he came in to purchase the ticket to Pakistan, did
19 he come in with anyone else?

20 A He came in with a friend.

21 Q Did you learn that other person's name?

22 A No.

23 Q When he was speaking with the friend, what language was
24 he speaking in?

25 A English.

Z. Shoudeywa - Direct/Ms. Komatireddy

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1 Q When he was speaking with you, what language was he
2 speaking in?

3 A English.

4 Q Did you observe him speaking any other languages?

5 A Arabic.

6 Q And when did you observe him speaking Arabic?

7 A On the phone.

8 Q And how did you know it was Arabic?

9 A Because I understand a little bit of Arabic.

10 Q How do you understand a little bit of Arabic?

11 A Because I've been to my father from Yemen. And I've been
12 to Yemen after I left Vietnam.

13 Q And when you observed him speaking Arabic on the phone,
14 could you tell what the substance of his conversation was
15 about?

16 A If I remember that he was talking to one of the
17 passengers that would travel with him about the term of the
18 payment and also the itinerary.

19 Q After this interaction with Mr. Farekh where you gave him
20 his tickets, did you ever see him again?

21 A No.

22 MS. KOMATIREDDY: No further questions.

23 THE COURT: All right. Any cross?

24 MR. MAHER: No, your Honor.

25 THE COURT: All right. You may step down. Thank

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1 you very much.

2 (Witness leaves the witness stand.)

3 THE COURT: Government's next witness.

4 MS. COOK: Your Honor, the Government moves for the
5 admission of Government Exhibits 1104-A through D as official
6 publications pursuant to Rule 9025.

7 THE COURT: Any objection?

8 MR. MAHER: No.

9 THE COURT: They are received.

10 (Government's Exhibits 1104-A through 1104-D were
11 received in evidence as of this date.)

12 MS. COOK: Thank you, your Honor. May I publish
13 them to the jury?

14 THE COURT: You may.

15 MS. COOK: Government's Exhibit 1104-A is a
16 publication dated Friday, October 8, 1999, containing a
17 designation by the United States Department of State that
18 designates certain organizations as foreign terrorist
19 organizations including al-Qaeda.

20 Government's Exhibit 1104-B is a publication dated
21 October 2, 2003, containing a designation by United States
22 Department of State or redesignation of certain organizations
23 as foreign terrorist organizations including an organization
24 known as al-Qaeda.

25 Government's Exhibit 1104-C is a publication dated

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1 January 22, 2009, containing a determination by the
2 United States Department of State that certain organizations
3 that had previously been designated as foreign terrorist
4 organizations that the designation shall be maintained those
5 foreign organizations include al-Qaeda. This publication
6 refers back to a redesignation in 2003.

7 And Government's Exhibit 1104-D is a publication
8 dated May 13, 2015, containing a decision by the United States
9 Department of State that the designation of al-Qaeda as a
10 foreign terrorist organization shall be maintained. And this
11 publication refers back to a determination made in 2009.

12 Thank you.

13 THE COURT: All right. Next.

14 MR. TUCKER: Your Honor, the Government, at this
15 time, will play the Rule 15 deposition. I would request your
16 Honor's deputy's assistance over at the podium and I think
17 your Honor wanted to give about the deposition and editing.

18 THE COURT: What this is, ladies and gentlemen, is a
19 videotaped deposition. You should regard it the same way you
20 would if the witness were actually here in court testifying.

21 The only difference is that, to speed things up,
22 some portions of it have been cut out that were not relevant
23 for your consideration so you might see the film jump a little
24 bit. Don't worry about that, we're seeing what we think you
25 need to see.

Deposition - Sufwan Murad

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1 MR. TUCKER: Your Honor, with the Court's permission
2 we'll hand out binders containing exhibits referenced in the
3 deposition. I'll ask Detective Dorino to assist me.

4 THE COURT: These are exhibits not the transcripts?

5 MR. TUCKER: Correct, your Honor. These are
6 exhibits referenced during the deposition.

7 Your Honor, it appears that everyone has a binder so
8 we'll proceed.

9 THE COURT: Okay.

10 (Video file played in open court.)

11

12 (Continued on the next page.)

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1 (Videotape continues playing.)

2 (Videotape stopped.)

3 MR. TUCKER: Judge, did you want to take a break?

4 THE COURT: I think if this is a good pausing point,
5 we can take our morning break right now.

6 Ladies and gentlemen, we'll take 15 minutes until
7 11:43. Don't talk about the case amongst yourselves. See you
8 in a few minutes.

9 (Jury leaves courtroom.)

10 (Time noted: 11:28 a.m.)

11 THE COURT: You think about another hour and a half?

12 MR. RUHNKE: I think it is less.

13 MR. TUCKER: Your Honor, the direct is an hour fifty
14 and we're 40 minutes in, so an hour ten for the direct.

15 THE COURT: So, we'll finish it after the break and
16 then break for lunch.

17 MR. TUCKER: Sounds good, Your Honor.

18 THE COURT: Thank you.

19 (Recess taken.)

20

21 (Defendant enters courtroom.)

22 (Time noted: 11:49 a.m.)

23 THE COURT: All right, be seated please. Let's
24 continue with the deposition.

25 MR. TUCKER: Yes, Your Honor.

1 (Videotape continues.)

2 THE COURT: All right. Good timing for our lunch
3 break, ladies and gentlemen. Please remember not to talk
4 about the case. Don't do any research about the case. Don't
5 communicate with anyone about the case. We'll see you here at
6 2:00. Have a good lunch.

7 (Time noted: One o'clock p.m.)

8 (Jury leaves courtroom.)

9 THE COURT: All right, recess one hour.

10 (Luncheon recess taken.)

11 (Continued on next page.)

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1 A F T E R N O O N S E S S I O N

2 (Time noted: 2:05 p.m.)

3 THE COURT: Okay. Let's have the jury please.

4 MR. RUHNKE: Your Honor, while we're just waiting
5 for the jury, I did file that in limine motion that we
6 discussed this morning.

7 THE COURT: I saw it. It was filed minutes ago.

8 (Jury enters courtroom.)

9 THE COURT: All right. Everyone be seated, please.
10 Welcome back, ladies and gentlemen.

11 The government's next witness.

12 MR. TUCKER: Your Honor, we're going to continue the
13 deposition now.

14 THE COURT: Okay.

15 (Videotape continuing.)

16
17 THE COURT: Mr. Tucker.

18 (Videotape paused.)

19 THE COURT: All right, let's take our mid-afternoon
20 break, 15 minutes until 3:30. I don't need to tell you to not
21 talk about the case amongst yourselves or with anyone else but
22 I'm telling you anyway.

23 See you in 15 minutes.

24 (Jury leaves courtroom.)

25 THE COURT: Okay, 3:30. About how much more do we

1 have you think?

2 MR. TUCKER: We have about two hours of video left,
3 it's about an hour fifty of the cross and eight minute
4 government redirect.

5 THE COURT: So, we won't finish the video today.

6 MR. TUCKER: I don't think so, Judge.

7 THE COURT: Okay. We'll go as long as we can.

8 (Recess taken.)

9 (Continued on next page.)

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1 MR. TUCKER: Judge, just so you know, we have 40
2 minutes left in this file and then if the Court wants, I'll
3 run over and start the third and final file which is an hour
4 twelve, that will take me just one second.

5 THE COURT: That's fine, we'll do that. Okay.
6 Let's have the jury please.

7 (Jury enters courtroom.)

8 THE COURT: All right. Everyone be seated. Let's
9 continue with the video.

10 MR. TUCKER: Yes, Your Honor.

11 (Videotape continuing.)

12 (Videotape stopped.)

13 MR. TUCKER: Your Honor, we're going to read the
14 final part of the deposition now.

15 THE COURT: Go ahead.

16 (Videotape continues.)

17 THE COURT: All right, stop here.

18 (Videotape stopped.)

19 THE COURT: Okay, ladies and gentlemen, we will
20 finish this video on the early side tomorrow, there's not a
21 lot left of it.

22 Please remember everything I've been telling you all
23 along, no media, no internet communications, no communications
24 of any kind. Put the case entirely out of your minds until we
25 see you tomorrow morning at 9:30.

1 Thank you again for your close attention.

2 (Time noted: 4:30 p.m.)

3 (Jury leaves courtroom.)

4 THE COURT: Okay. Be seated please.

5 I don't know if the government had a chance to
6 review the motion in limine that counsel filed I guess it was
7 this morning, have you?

8 MR. TUCKER: Yes, Your Honor, we read it on our
9 phones from counsel table.

10 THE COURT: Do you have anything to say about it?

11 MR. TUCKER: Is Your Honor referring to the motion
12 Mr. Ruhnke filed about Mr. --

13 MR. RUHNKE: At 2:00.

14 MR. TUCKER: Mr. Zazi's testimony? I just want to
15 make sure I'm talking about the same motion.

16 THE COURT: Yes. Hang on. It is the motion
17 concerning Mr. Vidino and Mr. Zazi.

18 MR. TUCKER: I don't have anything to share right
19 now, Your Honor. We'll get something filed tonight before the
20 end of the day.

21 THE COURT: I'm just curious as to the Vidino issue,
22 are you planning on having him testify about the process of
23 radicalization?

24 MR. TUCKER: I think that he'll testify generally
25 about that, Judge. He's certainly not going to opine

1 specifically about the defendant.

2 THE COURT: That's one of their complaints.

3 MR. TUCKER: Right.

4 THE COURT: Think carefully about that. I'll give
5 you a chance to be heard on it but think carefully about it.

6 Okay. Anything else we need to cover?

7 MR. RUHNKE: Your Honor, I'll just throw this out as
8 a problem; as I was listening to the witness this afternoon,
9 the video, and recalling last March when he testified in
10 person, but Mr. Zazi, if he testifies tomorrow, one of the two
11 subway people are scheduled tomorrow, if the government -- if
12 I'm accurate, and I raise this issue, this witness says that,
13 whether it is accurate, true, false or indifferent, that
14 Mr. Al Farekh was the director of operations, external
15 operations for al-Qaeda, the witness defined external
16 operation as attacks generally against the West including
17 Europe and the United States. The witness is there in 2009.
18 I'm sorry, the -- yes, the witness is there in 2009.

19 THE COURT: This witness?

20 MR. RUHNKE: The witness on the video is there in
21 2009, now along comes -- and the defendant, according to the
22 evidence, if it's accepted, is also in Pakistan and in the
23 area in 2009. Now here comes Zazi and Ahmedzay who are the
24 two subway bombers who will testify that in 2009 they were
25 directed by al-Qaeda instead of going to join the fight in

1 Afghanistan, to return to the United States to carry out
2 martyrdom, suicide bombing in the United States; how do we
3 stop the jury from drawing the inference that this must have
4 come from Mr. Al Farekh?

5 And it's something that just sort of connected for
6 me this afternoon as I listened to the testimony and having
7 recently been re-reading the prior testimony of Mr. Zazi and
8 Mr. Ahmedzay.

9 THE COURT: Is there any contention by the
10 government that these two individuals were dispatched to do
11 subway bombing by the defendant?

12 MR. PRAVDA: Not by the defendant, Your Honor.

13 MR. RUHNKE: But if --

14 THE COURT: You want a stipulation that there's no
15 such contention?

16 MR. RUHNKE: Well, there's no such contention but
17 the evidence is there for the jury to draw the inference if
18 the jury accepts what this witness says and that Mr. Al Farekh
19 was the director of al-Qaeda's external operations in 2009 and
20 then the other witnesses come along and said they were
21 directed to return to the United States, how can they not
22 conclude that it was Mr. Al Farekh.

23 THE COURT: Oh, I can think of a lot of ways they
24 could not conclude that. I take your point to be that they
25 could conclude otherwise. You know, if you want to address

1 that, the government, as I've just heard, is not going to
2 argue that the defendant sent them to New York to do this and
3 maybe the government will even stipulate that I can so advise
4 the jury when these witnesses testify that there is no
5 contention in the case that any acts undertaken by these
6 witnesses were at the behest of the defendant.

7 MR. RUHNKE: Or there's no evidence.

8 MR. PRAVDA: Your Honor, if I can address that point
9 right now, both Zazi and Ahmedzay will testify they don't know
10 the defendant, they never met him, both of them were directed
11 by Abdul Hafeez who was then the head of external operations
12 to carry out the subway attacks. The connection will be to
13 Abdul Hafeez. Both Zazi and Ahmedzay will testify that they
14 went through the military weapons training with Ferid Imam who
15 traveled to Pakistan with Mr. Al Farekh but they've never met
16 Mr. Al Farekh, they have no idea who he is.

17 THE COURT: So, if the government witnesses are
18 going to so testify, then I don't see how the jury could draw
19 a contrary conclusion.

20 MR. RUHNKE: I flag it and let's see, just we'll see
21 how it comes out. If we need a limiting instruction or
22 something or a stipulation from the government, then we can
23 deal with it at the time.

24 THE COURT: That's fine.

25 Anything else?

1 MR. TUCKER: Your Honor, just because I want to make
2 sure I was clear on the Court's advice or recommendation with
3 respect to Professor Vidino, Your Honor's point was we should
4 think carefully about whether we would want Professor Vidino
5 to opine specifically about the defendant and whether he was
6 radicalized?

7 THE COURT: No, I'm concerned about abstract
8 testimony on the process of radicalization that has not been
9 socially tested and verified, all right. Now, I haven't heard
10 this gentleman, I may need to hear him in a Daubert hearing if
11 indeed he's going to say there is a process known as
12 radicalization which social scientists recognize and here's
13 how it works, okay. I'm not sure a witness can do that, at
14 least based on the social science I've seen. So, I'm telling
15 you to consider that carefully.

16 I understand Mr. Ruhnke's point is this witness gave
17 such an opinion in a report that was given to a U.S. Attorney
18 in another case, that report was turned over here, so it seems
19 to me it is possible that's not one of the areas in which you
20 intend him to go into but if you do, then when you formulate
21 your response you need to convince me that this passes the
22 Daubert threshold, all right.

23 MR. TUCKER: Is's helpful, Your Honor, I appreciate
24 the Court's guidance.

25 MR. RUHNKE: Your Honor, just for further -- the

1 government also -- the long block quote on what radicalization
2 is comes from the government's description of their expert
3 evidence in this case.

4 THE COURT: Okay.

5 MR. RUHNKE: So, the government has said this is
6 what they intend to have him testify to, not just in another
7 case.

8 THE COURT: I'm just looking at the language in the
9 summary which says: "There is no typical profile of an
10 individual who is susceptible to radicalization.
11 Radicalization is not a linear process and is different for
12 different individuals."

13 And that makes me think, well, then what are we
14 talking about here, so think about it.

15 MR. TUCKER: Understood, Your Honor.

16 MR. RUHNKE: Thank you, Your Honor.

17 MR. TUCKER: One last question for the Court just so
18 I understand, so the plan with respect to Government's Exhibit
19 739 which is that typed letter we talked about this morning,
20 Your Honor.

21 THE COURT: Yes.

22 MR. TUCKER: I will call our investigator who will
23 testify about the handwritten letters so the Court can hear
24 that. Then the Court's plan is outside the presence of the
25 jury I'll conduct a short supplemental inquiry highlighting

1 the similarities and then the Court can make a final ruling?

2 THE COURT: If you want. I remain sceptical but
3 keeping an open mind. If you want to do it, that's the way
4 we'll do it.

5 MR. TUCKER: Understood, Your Honor. Thank you,
6 Your Honor.

7 THE COURT: See you tomorrow.

8 MR. TUCKER: See you tomorrow.

9 (Time noted: 4:45 p.m.)

10 (Proceedings adjourned as above set forth.)

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